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SUBJECT: MUMBAI'S ANTI-TRAFFICKING COURT REPORTS IMPRESSIVE FIGURE OF OVER 81 CONVICTIONS

REF: A. 09 MUMBAI 89
[1](#)B. 09 MUMBAI 305
[1](#)C. 09 MUMBAI 431

[1](#)1. (U) Summary. In just over a year of operation, the anti-human trafficking court in Mumbai has disposed of a large backlog of trafficking cases, and improved the conviction rate for traffickers. In 2009, the court adjudicated 438 cases, and recorded convictions in 81 cases, with more than one defendant convicted in most cases. The court also ordered the closure of 11 brothels. The transfer of many of Mumbai's trafficking cases to a single court has also helped identify trafficking patterns and repeat offenders, providing key analysis for law enforcement agencies. India would benefit from more urban anti-trafficking courts like Mumbai's which has made an impressive impact on enforcing anti-trafficking legislation in one of India's biggest cities. End Summary.

Anti-Trafficking Court Established

[1](#)2. (U) The anti-human trafficking court (ATC) was established in Mumbai in August 2008 to hear criminal cases under the Immoral Trafficking Prevention Act (ITPA). The Act criminalizes a number of prostitution and trafficking-relating activities, including living on the proceeds of the prostitution of another person, procuring or taking a person for prostitution, detaining a person in a location where prostitution is carried out, and public solicitation. Judge Swati Chauhan is the sole judge of this new court.

2009 Statistics Show Impressive Conviction Rates

[1](#)3. (U) Chauhan told Congenoff that at the beginning of 2009, her docket included 805 cases. Over the course of the year, 238 new cases were filed in her court. As of January 2010, she had resolved 438 cases. Chauhan reported that the court secured convictions of pimps, touts or other traffickers in 81 cases. The court records data per case, not per defendant, Chauhan explained, and often two or more defendants were convicted per

case. Of the cases resolved, 183 were closed without prosecution, often where the police were not able to produce or locate witnesses or defendants. Cases in which the defendant had absconded, such as a case from 1983 where a brothel keeper fled back to Nepal, were closed under section 258 of the Criminal Procedure Code which allows charges to be re-filed once the missing evidence or witnesses can be produced. Many of the closed cases involved solicitation charges against trafficked women under section 8 of the ITPA. In these cases, Chauhan allowed the women to plead guilty and pay a fine of 100 rupees (USD 2), which saves them the expense of hiring attorneys for multiple court appearances and facing potential jail time. The anti-trafficking court also ordered 11 brothels seized and closed. (Comment: The police, especially those who have attended anti-human trafficking courses, have been using section 8 less frequently in recent years. The Indian cabinet's proposed amendments to ITPA also include deletion of the section. End comment).

¶4. (U) With the backlog of old cases virtually eliminated, Chauhan predicted that judgments in ITPA cases would continue to rise. She reported that in December 2009 she disposed of 30 cases, her highest monthly record so far. Chauhan noted that many cases involve multiple defendants, only a few of whom are involved in ITPA violations, leading to high acquittal numbers. In one case, police raided a bar and arrested 168 people, regardless of culpability, resulting in 152 acquittals. Chauhan told Congenoff that she had counseled the police to make arrests more judiciously. Overall, she and the anti-trafficking NGO International Justice Mission (IJM) praised the Mumbai police for its anti-trafficking efforts. Chauhan said that the police initiated 90 percent of the anti-trafficking court's cases, with

MUMBAI 00000044 002 OF 003

only ten percent stemming from NGOs and civil society groups.

Conviction Data for Trafficking Cases Elusive

¶5. (U) Statistics from the anti-trafficking court reflect only a subset of all anti-trafficking cases in Mumbai. Only arrests made under the ITPA within the Mumbai city limits go before the court. Chauhan explained several other reasons why her court handles only a portion of the trafficking arrests across Mumbai. First, she noted that where a more serious crime is also involved -- such as kidnapping, weapons charges, murder or rape -- the case must be transferred to the higher Sessions Court. In one case, for example, the defendant was accused of drugging and taking an 18-year old victim to Mumbai from Bangalore. Chauhan raised the charges to include kidnapping and wrongful restraint, and transferred the case to the higher court. Chauhan transferred 22 such cases to the higher court in 2009. (Note: IJM reported convictions in two other cases tried in Mumbai Sessions Courts rather than the in the anti-trafficking court: (1) the Sewri District Sessions Court convicted four traffickers in December 2009 and (2) the Churchgate Sessions Court convicted four traffickers in December 2009. End Note.) Second, courts at the level of the anti-trafficking court may only issue sentences of up to seven years, while the ITPA authorizes sentences of up to life imprisonment for certain serious offenses. Where the case appears to warrant a longer sentence, Chauhan refers the case to the Sessions Court.

¶6. (U) Chauhan noted that in many human trafficking cases, the police are not able to meet the procedural requirements of the ITPA, and choose instead to make arrests for public nuisance or

other charges under the Bombay Police Act. ITPA requires a senior police official, such as an Assistant Commissioner of Police (ACP), and an independent witness to be present at the time of the arrest. If neither the ACP nor the independent witness is a female, a female police officer must also be present. Chauhan said it is often very difficult for police to bring the necessary parties together to make an arrest under ITPA in the middle of the night, which is when most trafficking raids are made. The rationale behind ITPA's procedural requirements is to prevent corruption by lower level officers who are often more susceptible to manipulation or pressure from traffickers. Further, Chauhan explained, under Indian law only senior ranking officers may enter a premise after 7:00 p.m. without an arrest warrant. Despite these obstacles, Mumbai police still filed 238 new cases before the ATC in 2009.

Specialized Trafficking Court Helps Bust Trafficking Networks

¶7. (U) According to Chauhan, the centralization of trafficking-related cases has allowed her to piece together evidence from different cases to uncover wider trafficking networks, which has significantly aided prosecution efforts. For instance, she noticed that in several cases involving call-girls from former Soviet Union countries, the same vehicle was used to take the girls to the customer. In the case of State v. Gopal Mundal, Chauhan linked together 55 traffickers in seemingly different cases by tying them to the same ring, the same car, and operations from the same three premises. She identified a total of six women serving as call-girls and ordered their return to their home countries. In addition, she directed the police to charge the driver, the owner of the vehicle, and the owner of the premises used for prostitution. Chauhan's information directly helped police to identify and disrupt a network of traffickers operating in New Delhi and Mumbai.

MUMBAI 00000044 003 OF 003

Challenges Remain

¶8. (U) According to Chauhan, the arrest and conviction record could be even higher if the state and central government had a unified database enabling law enforcement to look for patterns and prior convictions of traffickers across jurisdictions. She said that traffickers caught in Mumbai often move their operations to Thane, outside Mumbai, or to New Delhi.

She also explained that in cases with foreign victims or those from other Indian states, interpreters and translators must be present, often causing delays in prosecuting the case. Despite the best efforts of the police and courts, however, arrests alone have little deterrent effect on traffickers, Chauhan noted. In India, the accused has the right to be released on bail pending trial and appeals, and every defendant convicted of a crime has an automatic right of appeal to the Sessions Court and above.

Comment

¶9. (U) As Chauhan's experience makes clear, a dedicated anti-trafficking court is able to make a significant impact in bringing traffickers to justice. With 81 convictions in one year, Mumbai's anti-trafficking court has demonstrated its intent to fully prosecute trafficking charges. In an effort to better understand the total number of convictions for trafficking related offenses in Mumbai, post is working to obtain data from the Bombay High Court on the number of appeals filed from convictions under ITPA, other related penal statutes, and the Bonded Labor Act in 2009. This data should enable post to assess trafficking convictions involving higher crimes outside Chauhan's jurisdiction, convictions by other Magistrate Courts across the state, and forced-labor convictions.

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